

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

<b>DELFINA GAMEZ,</b>	§	
	§	
Plaintiff,	§	<b>Civil Action No.:</b>
	§	
<b>v.</b>	§	
	§	
<b>MEDICREDIT, INC.,</b>	§	<b>JURY TRIAL DEMANDED</b>
	§	
Defendant.	§	
	§	

**COMPLAINT**

DELFINA GAMEZ (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., allege the following against MEDICREDIT, INC. (“Defendant”):

**INTRODUCTION**

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), the Texas Debt Collections Practices Act, Tex. Fin. Code Ann. § 392.301 *et seq.* (“TFDCPA”), and the Telephone Consumer Protection Act, 47 U.S.C. Sec. 227, *et seq.* (“TCPA”).

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States.

1           3. Defendant conducts business in the State of Texas, and as such, personal  
2 jurisdiction is established.

3           4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).  
4

5  
6                                   **PARTIES**

7           5. Plaintiff is a natural person who resides in Dallas, Texas 75217.

8           6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692 a(3) and  
9 Tex. Fin. Code Ann. § 392.001(1).  
10

11           7. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

12           8. Defendant is a national debt collection company with headquarters located at 3  
13 City Place Drive, Suite 6900, Saint Louis, Missouri, 63141.

14           9. At all relevant times, Defendant acted as a “debt collector” within the meaning  
15 of 15 U.S.C. § 1692(a)(6) and Tex. Fin. Code Ann. § 392.001(6); and, Defendant attempted to  
16 collect a “debt” as defined by 15 U.S.C. §1692(a)(5) and Tex. Fin. Code Ann. § 392.001(2).  
17

18           10. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39)

19           11. Defendant acted through its agents, employees, officers, members, directors,  
20 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
21

22                                   **FACTUAL ALLEGATIONS**

23  
24           12. At all pertinent times hereto, Defendant was hired to collect a consumer debt  
25 and attempted to collect that debt from Plaintiff.

26           13. Defendant collects, and attempts to collect, debts incurred, or alleged to have  
27 been incurred, for personal, family, or household purposes on behalf of creditors using the U.S.  
28 Mail, telephone and/or internet.

1           14.     The alleged debt arose out of transactions primarily for personal, family, or  
2 house hold purposes.

3           15.     By way of background, beginning in or around October 2015, Defendant began  
4 placing repeated harassing telephone calls to Plaintiff regarding a medical debt.  
5

6           16.     Defendant's calls originated from the numbers including, but not limited to;  
7 (888) 930-4297. The undersigned has confirmed that this number belongs to Defendant.

8           17.     Plaintiff told Defendant in October 2015 to stop calling, revoking any consent  
9 previously provided to call her cellular telephone.  
10

11           18.     However, rather than stopping calls to Plaintiff's cellular telephone, Defendant  
12 continued to call Plaintiff, and placed repeated harassing telephone calls to her between March  
13 2016 and April 2016.

14           19.     Once Defendant was aware that its calls were not wanted there was no lawful  
15 reason to continue calls, and the only purpose continued calls could have served was to harass  
16 Plaintiff.  
17

18           20.     During this time, Defendant used an automatic telephone dialing system and  
19 automatic and/or pre-recorded messages, when contacting Plaintiff.  
20

21           21.     Plaintiff knew that Defendant was using an automatic telephone dialing system  
22 and automatic and/or pre-recorded message, as an automated message would play when she  
23 answered the telephone.

24           22.     Defendant's telephone calls were not made for "emergency purposes," but rather  
25 to collect an alleged debt.  
26

27           23.     On each occasion in which Plaintiff "pressed one", and she was transferred to  
28 one of Defendant's representatives, she requested that they cease placing calls to her cellular  
telephone, and instead, direct all communications to her mailing address.



1 continuously ring, and when it continued to call knowing the calls were unwanted as indicated  
2 by Plaintiff on multiple occasions, and knowing that Plaintiff could not pay the debt.  
3

4  
5 **COUNT II**  
6 **DEFENDANT VIOLATED § 392.302(4) OF THE TFDCPA**

7 32. A debt collector violates § 392.302(4) of the TFDCPA by causing a telephone to  
8 ring repeatedly or continuously, or making repeated or continuous telephone calls, with the  
9 intent to harass a person at the called number.

10 33. Defendant violated § 392.302(4) of the Texas FDCPA when it placed repeated  
11 harassing telephone calls to Plaintiff's cellular telephone, causing her telephone to repeatedly  
12 and continuously ring, and when it continued to call knowing the calls were unwanted as  
13 indicated by Plaintiff on multiple occasions, and knowing that Plaintiff could not pay the debt.  
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15  
16 **COUNT III**  
17 **DEFENDANT VIOLATED THE TCPA**

18 34. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a  
19 person or entity to bring in an appropriate court of that state "an action based on a violation of  
20 this subsection or the regulations prescribed under this subsection to enjoin such violation."  
21

22 35. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person  
23 or entity to bring in an appropriate court of that state "an action to recover for actual monetary  
24 loss from such a violation, or to receive \$500 in damages for each such violation, whichever is  
25 greater."  
26

27 36. Plaintiff did not give consent for Defendant to place telephone calls to her  
28 cellular phone after October 2015.

37. Defendant ignored Plaintiff's revocation and repeatedly placed non-emergency

1 calls to Plaintiff's telephone without Plaintiff's consent.

2 38. The Act also authorizes the Court, in its discretion, to award up to three (3)  
3 times the actual damages sustained for violations.

4 39. Defendant called Plaintiff on her cellular telephone dozens of times beginning in  
5 October 2015.

6 40. Defendant's conduct violated §227(b)(1)(A)(iii) of the TCPA by placing  
7 repeated calls using an automatic telephone dialing system and an artificial prerecorded voice  
8 to Plaintiff's cellular telephone number.  
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11

12 WHEREFORE, Plaintiff, DELFINA GAMEZ, respectfully prays for a judgment as  
13 follows:

- 14 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
15 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
16 to 15 U.S.C. § 1692k(a)(2)(A);  
17 c. All attorneys' fees, witness fees, court costs and other litigation costs  
18 incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);  
19 d. All reasonable attorneys' fees, witness fees, court costs and other  
20 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3)  
21 and Tex. Fin. Code § 392.403(b);  
22 e. Statutory damages of \$500.00 for each violation of the TCPA, pursuant  
23 to 47 U.S.C. §227(c)(5)(B); and  
24 f. Any other relief deemed appropriate by this Honorable Court.  
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28

1 RESPECTFULLY SUBMITTED,

2  
3 Dated: March 3, 2017

KIMMEL & SILVERMAN, P.C.

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